IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B.CRIMINAL MISC. PETITION NO. 1059/2003
(Iqbal & Ors. Vs. State of Rajasthan & Anr.)

Date of Order : 08/12/2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. N.L.Joshi for the petitioners.
Mr. Ashok Upadhyay, public prosecutor for the State.
Mr. B.N.Kalla for the non-petitioner No.2.

BY THE COURT:-

This criminal misc. petition under Section 482 Cr.P.C. is directed against the order dated 3.9.2003 passed by Chief Judicial Magistrate, Churu (for short 'the trial court' hereinafter), whereby the trial court took the cognizance of the offence under Section 147, 323, 341, 427 and 149 IPC and issued process.

Heard learned counsel for the parties. Carefully gone through the order impugned.

It is contended by learned counsel for the petitioners that on an FIR dated 12.10.2002 lodged by the non-petitioner No.2, the police investigated the case and fled challan against petitioner No.1 Iqbal and petitioner No.5 Lal Mohammed for the

offence under Sections 323/34 and 341 IPC and therefore, the trial court fell in error in entertaining the complaint filed by the non-petitioner No.2, taking cognizance and issuing process against the petitioners.

Learned public prosecutor and counsel appearing for the non-petitioner No.2 supported the order impugned.

On perusal of the material on record, it appears that the first information report was lodged by the non-petitioner No.2 against the present petitioners and three others. The matter was investigated by the police and police filed challan only against two persons i.e. petitioners No. 1 Iqbal and petitioner No.5 Lal Mohammed and left the other persons named in the FIR. A complaint was filed by the non-petitioner No.2 before the trial court for the offences under Sections 452, 427, 323/34, 341, 148 and 149 IPC. The complainant made statement before the trial court under Section 200 Cr.P.C. and produced the witnesses PW-2 Shabir, PW-3 Arif, PW-4 Dhannaram and PW-5 Inayat Khan. The trial court recorded the statements of these witnesses and on the basis of the material placed before it as also keeping in view the statements of the witnesses recorded by it, the trial court came to the conclusion that prima-facie there is ground to proceed against the persons who were left by the police namely Shakur Khan, Arif, Jannat and Jafar as also against petitioners No. 1 and 5 for the offenes

under Sections 147, 323, 341 and 427/149 IPC and accordingly took the cognizance of the offence and issued the process.

In Radha & Anr. Vs. State of Rajasthan & Anr., 2003 (2) Cr.L.R. (Raj.) 1146, this Court held that taking cognizance of the offences and issuing process against the accused persons, who were named in the FIR but on investigation no Challan was filed against them and were not sent up for trial, on a complaint, the trial Court issued process against the petitioners and arraigned them as accused along with those accused challaned by the police and in such case, the learned Magistrate took the cognizance of offences under the provisions of Section 190 (1) (b) of the Code, was held to be in accordance with law.

In Raghubans Dubey Vs. State of Bihar, AIR 1967 SC 1167, the Hon'ble Supreme Court held as under:-

> "In our opinion, once cognizance has been taken by the Magistrate, he takes cognizance of an offence and not of the offenders; once he takes cognizance of an offence, it is his duty to find out who the offenders really are and once he comes to the conclusion that apart from the persons sent up by the police some other persons are involved, it is his duty to proceed against those persons. The summoning of the additional accused is part of the proceeding initiated by his taking cognizance of an offence."

In Raghubans Dubey's case (supra), Raghubans

Dubey, the appellant therein, was one of fifteen persons mentioned as assailants in the FIR. The police investigated the case and filed charge-sheet against some of the accused, however, the name of Raghubans Dubey was not included as an accused in the final report under Section 173 of the Code. His name was, however, mentioned in Column No.2 of the charge-sheet under the heading "not sent up". On 23-3-1961, cognizance of offence under Section 302/149 IPC was taken. On 11-4-1961, an application on behalf of the person who lodged the FIR was filed requesting the Magistrate to summon Raghubans Dubey as an accused. Two witnesses were examined on 2-5-1961. The Magistrate, after hearing, issued non-bailable warrant against Raghubans Dubey. The order of the Magistrate was challenged before the Sessions Judge, which did not find favour and the challenge was rejected. Against the order of the learned Sessions Judge, Raghubans Dubey moved the High Court by way of filing a revision petition. The High Court held that the Magistrate did not summon the appellant therein (Raghubans Dubey) only on those grounds which were before the Sub-Divisional Magistrate as the material before the Magistrate were not identical, the SDM had acted on the police report alone but the Magistrate took into consideration the evidence of two prosecution witnesses examined in the Court as well and accordingly the revision petition was rejected. On further special

leave petition before the Hon'ble Supreme Court, the Apex Court held that once cognizance of an offence is taken, it is the duty of the Magistrate to find out who the offenders really are and once he comes to the conclusion that apart from the persons sent up by the police some other persons are involved, it is his duty to proceed against those persons. The summoning of additional accused is part of proceedings initiated by taking cognizance of an offence.

In SWIL Ltd. Vs. State of Delhi & Anr., (2001) 6 SC 670, the Hon'ble Supreme Court held as under:-

> "In our view, from the facts stated above, it is clear that at the stage of taking cognizance of the offence, provisions of Section 190 Cr.P.C. would be applicable. Section 190 inter alia provides that 'the Magistrate may take cognizance of any offence upon a police report of such facts which constitute an offence.' As per this provision, the Magistrate takes cognizance of an offence and not the offender. After taking cognizance of the offence, the Magistrate u/s 204 Cr.P.C. is empowered to issue process to the accused. At the stage of issuing process, it is for the Magistrate to decide whether process should be issued against particular person/persons named in the charge-sheet and also not named therein. For that purpose, he is required to consider the FIR and the statements recorded by the police officer and other documents tendered along with charge-sheet. Further, upon receipt of police report u/s 173 (2) Cr.P.C., the Magistrate is entitled to take cognizance of an offence u/s 190 (1) (b) even if the police report is to the effect that no case is made out against the accused by ignoring the conclusion arrived at by the investigating officer and independently applyi9ng his mind to the facts emerging from the investigation by taking into account the statement of the witnesses examined by the police. At this stage, there is no question of application of Section 319 Cr.P.C."

In Gopal Vijay Verma Vs. Bhunveshwar Prasad Sinha & ors., (1982) 3 SCC 510, the Hon'ble Supreme Court held the High Court was clearly in error in thinking that the Magistrate could not take cognizance of a case upon complaint because he had earlier refused to take cognizance of the case on a police report. The order of the High Court was set aside and the matter was remitted to the chief Judicial Magistrate, Patna for disposal according to law. It was further held that if the accused have nay further objections to raise, they may do so before the Chief Judicial Magistrate. that there can be no fresh investigation on receipt of every subsequently information in respect of the same cognizable offence or the same occurrence or incident giving rise to one or more cognizable offence.

Thus, from the law propounded by the Hon'ble Supreme Court in the decisions referred hereinabove, in my view, the trial Court was justified in taking cognizance of the offences and issuing process against the present petitioners despite the fact that the police filed challan only against petitioners No.1 and 5. What is required by law is that the Magistrate has to examine the statements of witnesses recorded by the police under Section 161 of the Code, as also the statements of witnesses recorded by the trial Magistrate under

Sections 200 and 202 of the Code and if from the material on record, the trial Magistrate comes to the conclusion that there is ground to proceed against the petitioners then it cannot be said that the order taking cognizance is bad in law.

In view of the aforesaid discussion, no case for interference in the inherent jurisdiction is made out. The criminal misc. petition is therefore, dismissed.

(H.R.PANWAR),J.

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